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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,179	09/12/2003	Therese Cetrulo	006493.00937	8282
66811 7590 12/04/2007 BANNER & WITCOFF, LTD. and ATTORNEYS FOR CLIENT NO. 006943 10 SOUTH WACKER DR. SUITE 3000 CHICAGO, IL 60606			EXAMINER PADEN, CAROLYN A	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 12/04/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/661,179	CETRULO ET AL.	
	Examiner	Art Unit	
	Carolyn A. Paden	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 31, 2007 has been entered.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 7, 8, 14-17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Powers (4,889,739) for reasons of record.

Powers discloses commercial feed juices having a more hand-squeezed character. The feed juices are disclosed at column 7; lines 2-19 to have a sinking pulp value of 8% or less. The Brix content of the juice of example 1 is 13.7. At column 43 the concept of adding water to orange juice is shown for orange juice concentrates. Claim 1 appears to differ from

Powers in the use of a diluent to lower the Brix level to about 9 degrees Brix. At column 4, line 65 the original sinking pulp values are disclosed to be at least about 10%. Thus for the overall disclosure of Powers, it is obvious that some of the sinking pulp is removed when providing a standard single strength orange juice. Although orange juice is typically not diluted to levels under that found in single strength orange juice, it would have been obvious to dilute it more to extend the orange juice to provide more orange drink. Because sinking pulp is a very important ingredient in providing "hand-squeezed character" to orange juice, it would have been obvious to fortify the diluted beverage of Powers to provide a better orange juice flavor to the product. The additional orange flavor ingredients are well known additives for orange juice as disclosed in Example 1. It is appreciated that the method by which the sinking pulp is made is not made but process limitations do not carry any weight in product claims. It is also appreciated that a reduction in sugar content is not mentioned but one of ordinary skill in the art would expect the sugar content of orange juice or grapefruit juice to go down when the juice is diluted to a drink. It is appreciated the sensory and texture attributes "comparable to whole citrus

juice" is not mentioned but these attributes are uncharacterized and do not alone constitute unobviousness.

Applicant argues that examiner's position is improper because orange juice is "typically not diluted." This argument has been considered but is not persuasive. There is no technical reason why the juice of Powers cannot be diluted. The fact that it is not conventionally done in Powers is not seen to constitute unobviousness. Orange juice has a standard of identity, which sets forth a particular Brix level for single strength orange juice. But one of ordinary skill in the art may dilute the orange juice to any extent as long as he modifies the packaging label for the orange juice to state that it is an orange drink. Dilution of orange juice is a well-known expedient. Even the ordinary consumer is familiar with diluting purchased frozen concentrated orange juice to obtain single strength orange juice. Water is a well-known diluent for orange juice. Applicant argues that dilution of orange juice would lower the sinking pulp to a level below that of the claims. This has been considered but is not persuasive. Claim 1 merely calls for 3% sinking pulp. No unobvious result is seen from the recitation of particular amount of sinking pulp that is set forth in the claims. Applicant urges caloric reduction but one of ordinary skill in the food art

would recognize that water has fewer calories than sugar and that the Brix level of a liquid is a measure of its sugar content.

Claims 1-4, 7-8 and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ojima et al (7,029,717) in view of Powers (4,889,739).

Ojima discloses an orange juice drink containing sucralose at example 30. The claims appear to differ from Ojima is the recitation of the Brix level of the diluted juice drink and the extent of sinking pulp in the juice. Powers teaches orange juice with the claimed sinking pulp level, that has a more hand-squeezed character. The feed juices are disclosed at column 7, lines 2-19 to have a sinking pulp value of 8% or less. The Brix content of the juice of example 1 is 13.7. At column 43 the concept of adding water to orange juice is shown for orange juice concentrates. Thus for the overall disclosure of Ojima, it would have been obvious to use more of the juice of Powers in the beverage of Ojima to provide a lower calorie juice with a hand squeezed flavor. It is appreciated that the reduction of sugar is not mentioned but the extent of sugar reduction would have been dependent upon the starting concentration of the orange juice and the

extent of water added to the juice. The preparation method of claim 7 is a process limitation, carrying no weight in product claims.

Applicant argues that Ojima does not show an orange juice drink at example 30. Example 50 shows an orange juice drink with sucrose. Applicant urges that Ojima does not show the orange juice of the claims. This has been considered but is not persuasive because Power is relied upon to show the components of orange juice. Applicant argues that Powers does not disclose the required Brix level and diluent. This argument has been considered but is not persuasive for the reasons argued above with respect to the Powers rejection.

Claims 1, 3-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kupper (4,690,827) in view of Powers ((4,889,739).

Kupper discloses fruit juice with artificial sweetener. At column 1, line 15 the extent of dilution of the juice is disclosed. At column 1, lines 49-50 both orange and grapefruit juice is disclosed. The concept of adding juice pulp is discussed at column 2, lines 28-48. Homogenizing orange juice and pulp together is disclosed at example 1, lines 65-68. The claims appear to differ from Kupper in the recitation of the use of sinking pulp as the selected pulp. Powers teaches that citrus juice has an established brix level and

sinking pulp level in single strength citrus juice. It would have been obvious to include the sinking pulp of Powers in the beverage of Kupper to optimize the hand squeezed flavor of the beverage. It is appreciated that fortification with calcium and tocopherol is not mentioned but orange juice and orange drink are excellent vehicles for food fortification. It would have been obvious to supplement the beverage of Kupper with nutrients to enhance the nutritional quality of the beverage. The release of the pectin in claim 13 is a process limitation, carrying no weight in product claims.

Applicant argues that one would not expect to dilute the beverage of Powers because of the alterations in the physical characteristics of the beverage. Dilution of orange juice is a well-known expedient. Even the ordinary consumer is familiar with diluting purchased orange juice. Water is a well-known diluent for orange juice. Applicant argues the taste and texture of the product but no unexpected difference is seen between the taste and texture of the claimed product and that of the referenced product.

No claim is allowed.

This is a continued examination of applicant's earlier Application No. 10/661,179. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and

art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached by dialing 571-272-1700, art unit 1794. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Carolyn Paden

CAROLYN PADEN 12-3-07
PRIMARY EXAMINER 1761